IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4925 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

D D O

Versus

PATHABHAI MAVJIBHAI

Appearance:

1. Special Civil Application No. 4925 of 1994

MR DD VYAS for Petitioner No. 1-3

NOTICE SERVED for Respondent No. 1-5

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 22/04/2004

ORAL JUDGEMENT

District Panchayat, Surendranagar had preferred the present Special Civil Application under Article 227 of the Constitution of India challenging the award passed by the Labour Court, Surendranagar in Recovery Application No. 461 of 1992 by which the Labour Court has directed the District Panchayat to make payment of salary to the respondent workmen for the period between date of award of the Labour Court and till they came to

be reinstated.

2. This matter is of 1994. The matter was notified on Board yesterday, i.e. 21.4.2004. The matter was called out thrice, but the learned advocate appearing for the petitioner did not remain present and therefore in the interests of justice the matter was adjourned today. Today also the learned advocate for the petitioner had not remained present in the first session. Therefore , it was kept in the 2nd session. In the 2nd session also when the matter was called out again, the learned advocate had not remained present. Therefore, this Court has no other alternative but to decide and dispose of the matter ex-parte on merits on the basis of the materials available on record.

3. The respondents No. 1 to 5 were working in the District Panchayat and their services came to be terminated on 5th January 1986. Being aggrieved and dissatisfied with the same all the respondents workmen raised an industrial dispute which was referred to the Labour Court, Surendranagar which were numbered as References No. 1833 of 1986, 2344 of 1986, 2345 of 1986 and 2347 of 1986 and 2349 of 1986. The Labour Court, Surendranagar by judgment and order dated 4th July 1989 allowed all the References and set aside the order of termination and passed an order to reinstate the workmen with continuity of service. Being aggrieved and dissatisfied with the said judgment and award, the District Panchayat preferred Special Civil Applications No. 7229 of 1989 to 7233 of 1989. This Court dismissed all the Special Civil Applications confirming the judgment and award passed by the Labour Court, Surendranagar . It seems that inspite of the dismissal of the aforesaid Special Civil Applications the workmen were not reinstated and therefore a contempt petition being Miscellaneous Civil Application No. 70 of 1992 and thereafter all the workmen were taken on duty in the year 1992.

4. As the workmen were not paid the salary for the period between date of passing of the award i.e., 4.7.1989 till their reinstatement in May 1992 all the workmen approached the Labour Court, Surendranagar under Section 33(c)(2) of the Industrial Disputes Act, 1947 by way of Recovery Application No. 461 of 1992. In that application the workmen had stated that they were required to be paid the salary on the basis of Government Circular dated 17.10.1988 and as the Labour Court, Surendranagar passed the award with continuity of service they were required to be paid salary as paid to their

juniors and the respondents No. 1 to 4 herein have prayed for an amount of Rs. 22,385 and respondent No.5 Amarsibhai Khodabhai prayed for Rs. 44,472. The said application was resisted by the petitioner District Panchayat. It was stated on behalf of the petitioner that they are not required to give the benefit of Government Circular dated 17.10.1988 as at the relevant time they were not on duty. It is also further submitted on behalf of the petitioner that it is true that they were required to be paid salary as per the Minimum Wages Act and they are entitled to only that much amount but not the salary as per the Government Resolution dated 17.10.1988 and therefore requested to dismiss the Recovery Application.

5. After adducing evidence, the Labour Court, Surendranagar by its order dated 27th August 1993 allowed the aforesaid recovery application by directing the petitioner to pay an amount of RS. 22,385 to each of the respondents No. 1 to 4 and Rs. 44,472 to the respondent No.5 herein. As the order passed by the Labour Court, Surendranagar dated 27.8.1993 in Recovery Application No. 461 of 1992 was not complied with the respondent workmen preferred another Recovery Application No. 389 of 1993 and for issuance of Recovery Certificate in favour of Collector, Surendranagar, and the Labour Court, Surendranagar by order dated 17th December 1993 passed an order to issue Recovery Certificate in favour of Collector, Surendranagar for recovery of the amount which was required to be paid as per the order passed in Recovery Application No. 461/92 dated 27.8.1993 and a notice was issued by the Circle Officer (Revenue), Surendranagar for recovery of the aforesaid amount on 18th February 1994. On receipt of the aforesaid notice with regard to recovery dated 18.2.1994 the District Panchayat woke-up and filed the present Special Civil Application in the month of March 1994 challenging the order passed by the Labour Court, Surendranagar dated 27.8.1993 in Recovery Application No. 461 of 1992 and also the order passed by the Labour Court, Surendranagar dated 17.12.1993 in Recovery Application No. 389 of 1993.

6. In the petition it is stated that the respondent workmen were serving as daily wagers and by award passed by the Labour Court they were required to be reinstated in their original posts and given work in the manner in which they were being given the work prior to their discharge but they are not entitled to the benefit of Circular dated 17.10.1988. Except the aforesaid argument in the memo of petition, no ground is stated with regard

to challenging the award passed by the Labour Court in Recovery Application.

7. I have perused the memo of Special Civil Application as well as the order passed by the Labour Court, Surendranagar in Recovery Application. While passing the impugned order, the Labour Court has not only relied upon the evidence on record but has also come to the conclusion that juniors to the respondent-workmen were given the benefit of Government Circular dated 17.10.1988. By the judgment and award, the Labour Court, Surendranagar had directed the petitioner Panchayat to reinstate the respondents with continuity of service. Accordingly continuity of service is given and when the juniors to the respondent-workmen are already given the benefit of government Circular dated 17.10.1988 and they are paid the salary accordingly following the award of the Labour Court, it cannot be said that the order passed by the Labour Court is erroneous and/or illegal which calls for interference of this Court exercising power under Article 227 of the Constitution of India. It is also required to be considered that even representative of the District Panchayat has also admitted in the cross-examination that it is true that the respondent workmen were required to be paid the salary on the basis of the Minimum Wages Act for the interregnum period,i.e., from the date of passing of the award till their reinstatement. Therefore, the question which was required to be considered was with regard to difference in the salary. Even the District Panchayat did not pay the salary for the period between the date of passing of the award by the Labour Court and till their reinstatement even after dismissal of its Special Civil Application by this Court even under the Minimum Wages Act. This shows the conduct of the District Panchayat. The order passed by the Labour Court, Surendranagar in aforesaid Recovery Application after adducing evidence on record cannot be said to be in any way erroneous.

8. Under the circumstances, there is no substance in the present Special Civil Application and the same is required to be dismissed. Accordingly it is dismissed. Rule is discharged. Ad-interim relief stands vacated. The petitioner Panchayat is directed to pay 50 per cent of the balance amount to the respondent workmen forthwith preferably on or before 30th June 2004 without fail.

At this stage, Shri Pranav Raval, ld. advocate has submitted that his presence may be marked and therefore the Office is directed to show the presence of Mr. Raval as advocate appearing on behalf of the

petitioner.

rmr. [M.R. Shah, J.]